

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

PETER J. MILLER, an individual,  
CLIFFORD HOYT, an individual, and  
CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.,  
a Delaware corporation,

Plaintiffs,

v.

PATRICK TREADO, an individual, and  
CHEMIMAGE CORP., a Delaware  
corporation,

Defendants.

**Civil Action No. 05-10367-RWZ**

**JOINT STATEMENT ON CLAIM CONSTRUCTION**

Pursuant to the approved portion of the Joint Statement and Proposed Pretrial Schedule, counsel for plaintiffs Cambridge Research and Instrumentation, Inc. ("CRI"), Peter J. Miller, and Clifford Hoyt and counsel for defendants ChemImage Corporation ("ChemImage") and Patrick Treado hereby file this Joint Statement on Claim Construction.

**Defendants' Statement Concerning Plaintiffs' Proposed Claim Constructions:**

In the Joint Statement and Proposed Pretrial Schedule (Dockey Entry No. 16), the plaintiffs proposed, and sought the Court's approval for, an early patent claim construction process. At the Scheduling Conference on July 27, 2005, the Court approved the plaintiffs' proposal in part by requiring the parties to exchange proposed claim constructions on October 1, 2005, and then to file a Joint Statement on Claim Construction by October 15, 2005. Thus, under the plaintiffs' proposed schedule, the parties had more than two months after the

Scheduling Conference, and seven months after the filing of this case, to decide on their proposed claim constructions before the exchange on October 1. The parties then had two further weeks to formulate their “counter constructions” on any claim term construed by the opposing party but not construed in that party’s original October 1 submission.

The parties did exchange proposed claim constructions on October 1. On October 15, the plaintiffs circulated a draft proposed Joint Statement on Claim Construction, in which they purported to change all of the claim construction positions that they had taken just two weeks earlier. Those purported changes (in particular, those to the critical claim term “scattered”) are dramatic. Moreover, the changes made by the plaintiffs are based on positions that the defendants took in the claim construction statement that the defendants provided to the plaintiffs on October 1. The purpose of a simultaneous exchange of claim construction positions is to prevent such gamesmanship, and to put both sides in an equal position on claim construction issues.

The defendants object strenuously to the plaintiffs’ attempt to change position. Simply put, in the context of a simultaneous exchange of positions, it would be materially unfair and prejudicial to the defendants if the plaintiffs are permitted to now alter their claim construction positions. The defendants submit that the plaintiffs should be held to the claim construction positions that they delivered on October 1 (a copy of which is attached hereto as Exhibit 1).

**Plaintiffs’ Statement Concerning Proposed Claim Construction Schedule:**

Plaintiffs disagree with defendants' position and are prepared to discuss the matter at the pretrial conference scheduled for next Tuesday, October 25, 2005.

**I. CLAIM 1 OF U.S. PATENT NO. 6,734,962**

For convenience, Claim 1 of U.S. Patent 6,734,962 ("the '962 patent") is reproduced below, with the terms being discussed herein bolded:

1. A **near infrared radiation chemical imaging system** comprising:
  - (a) an illumination source for illuminating an area of a sample using light in the **near infrared** radiation wavelength;
  - (b) a **device for collecting** a spectrum of **near infrared** wavelength radiation light transmitted, reflected, emitted or **scattered** from said illuminated area of said sample and producing a collimated beam therefrom;
  - (c) a **near infrared imaging spectrometer** for selecting a **near infrared** radiation image of said collimated beam; and
  - (d) a detector for collecting said filtered **near infrared** images.

**II. CLAIM CONSTRUCTIONS****A. "... near infrared ..."**

<b>Plaintiffs' Proposal</b>	<b>Defendants' Proposal</b>
Plaintiffs agree with Defendant's proposed claim construction, which has intrinsic support at col. 1, lines 23-25, of the '962 patent.	"near infrared" as recited in Claims 1 and 10-13 means 0.78 to 2.5 microns (12,800 to 4,000 $\text{cm}^{-1}$ )

**B. “... near infrared radiation chemical imaging system ...”**

<b>Plaintiffs' Proposal</b>	<b>Defendants' Proposal</b>
The "near infrared radiation chemical imaging system" recited in Claim 1 means any system for imaging near infrared radiation, including a microscope optic platform and "other image gathering platforms," such as "fiberscopes, macrolens systems and telescopes" (see, e.g. the '962 patent, col. 4, lines 5-9: "While this invention has been demonstrated on a microscopic optic platform, the novel concepts are also applicable to other image gathering platforms, namely fiberscopes, macrolens systems and telescopes").	The near infrared radiation chemical imaging system recited in claim 1 corresponds to a chemical imaging system that operates in the near infrared range, and that includes all of the elements of claim 1.

**C. “... device for collecting a spectrum of near infrared wavelength radiation light transmitted, reflected, emitted or scattered from said illuminated area of said sample and producing a collimated beam therefrom ...”**

<b>Plaintiffs' Proposal</b>	<b>Defendants' Proposal</b>
The "device for collecting" recited in Claim 1 means one or more optical elements for gathering radiation in the near infrared region and producing a collimated beam therefrom, and may comprise "one of a refractive type infinity-corrected near infrared optimized microscope objective, a refractive fixed tube length microscope objective, and a reflecting microscope objective" (see, e.g., the '962 patent, Claim 3, at col. 14, lines 37-41).	The device for collecting recited in claim 1 corresponds to a device that collects a spectrum of near infrared radiation light transmitted, reflected, emitted or scattered from the illuminated area of the sample and produces a collimated beam therefrom

**D.     "... scattered ..."**

<b>Plaintiffs' Proposal</b>	<b>Defendants' Proposal</b>
The term "scattered" in the phrase "a device for collecting a spectrum of near infrared wavelength radiation light transmitted, reflected, emitted or <i>scattered</i> from said illuminated area of said sample and producing a collimated beam therefrom" (emphasis added) in Claim 1 means the radiation is deflected elastically or inelastically from the sample.	The term "scattered" in the phrase "scattered from said illuminated area of said sample" in Claims 1, 12 and 13 means elastically scattered.

**E.     "... near infrared imaging spectrometer ..."**

<b>Plaintiffs' Proposal</b>	<b>Defendants' Proposal</b>
The term "near infrared imaging spectrometer" recited in Claim 1 means an optical element capable of producing an image in the near infrared spectrum, and may comprise one of "Lyot liquid crystal tunable filters; Evans Split-Element liquid crystal tunable filters; Solc liquid crystal tunable filters; Ferroelectric liquid crystal tunable filters; Liquid crystal Fabry Perot filters; a hybrid filter formed from a combination of liquid crystal tunable filters; and a combination of a liquid crystal tunable filter and a fixed bandpass and bandreject filters" (see, e.g., the '962 patent, Claim 4, at col. 14, lines 58-67).	A near infrared imaging spectrometer corresponds to an imaging spectrometer that operates in the near infrared range.

**PLAINTIFFS**

**PETER J. MILLER,  
CLIFFORD HOYT, and  
CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.**

By their attorneys,

/s/ Teodor J. Holmberg

Martin B. Pavane (admitted pro hac vice)  
Teodor J. Holmberg (BBO #634708)  
Cohen, Pontani, Lieberman, and Pavane  
551 Fifth Avenue  
New York, NY 10176  
Tel. (212) 687-2770  
Fax. (212) 972-5487  
e-mail: tidge@cplplaw.com

Brian L. Michaelis (BBO# 555159)  
Erin E. McLaughlin (BBO# 647750)  
Brown Rudnick Berlack Israels LLP  
One Financial Center  
Boston, MA 02111  
Tel. (617) 856-8200  
Fax (617) 856-8201

DATED: October 19, 2005

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**DEFENDANTS**

**PATRICK TREADO and  
CHEMIMAGE CORPORATION**

By their attorneys,

/s/ Anthony J. Fitzpatrick

Anthony J. Fitzpatrick (BBO #564324)  
Duane Morris LLP  
470 Atlantic Avenue, Suite 500  
Boston, MA 02210  
Tel. 617-289-9220  
Fax 617-289-9201  
e-mail: ajfitzpatrick@duanemorris.com

Paul D. Weller (admitted pro hac vice)  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103  
Tel. (215) 963-5530  
eFax (215) 963-5001

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT FOR THE  
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PETER J. MILLER, an individual,  
CLIFFORD HOYT, an individual, and  
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PATRICK TREADO, an individual, and  
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**Civil Action No. 05-10367-RWZ**

**PLAINTIFFS' PROPOSED CLAIM CONSTRUCTIONS**

Pursuant to the portions of the Joint Statement approved by the Court, Plaintiffs, Peter J. Miller, Clifford Hoyt and Cambridge Research and Instrumentation, Inc. (collectively "Plaintiffs") hereby propose the following claim constructions to Defendants, Patrick Treado and Chemimage Corp.'s (hereinafter "Defendants"). Plaintiffs reserve the right to supplement and/or modify these claim constructions.



### CLAIM CONSTRUCTIONS

For convenience, Claim 1 of U.S. Patent 6,734,962 ("the '962 patent") is reproduced below, with the terms being constructed herein bolded:

1. A **near infrared radiation chemical imaging system** comprising:
  - (a) an illumination source for illuminating an area of a sample using light in the near infrared radiation wavelength;
  - (b) a **device for collecting** a spectrum of near infrared wavelength radiation light transmitted, reflected, emitted or **scattered** from said illuminated area of said sample and producing a collimated beam therefrom;
  - (c) a **near infrared imaging spectrometer** for selecting a near infrared radiation image of said collimated beam; and
  - (d) a detector for collecting said filtered near infrared images.

1. **Claim Construction: "near infrared radiation chemical imaging system"**

The "near infrared radiation chemical imaging system" recited in Claim 1 may comprise, besides a microscope optic platform, one of "other image gathering platforms," such as "fiberscopes, macrolens systems and telescopes" (see, e.g. col. 4, lines 5-9, the '962 patent).

2. **Claim Construction: "device for collecting"**

- (a) The "device for collecting" recited in Claim 1 may comprise "one of a refractive type infinity-corrected near infrared optimized microscope objective, a refractive fixed tube length microscope objective, and a reflecting microscope objective" (see, e.g., Claim 3, the '962 patent).
- (b) Thus, the "device for collecting" need not be infinity-corrected, since "a refractive fixed tube length microscope objective" is neither infinity-corrected nor capable of being infinity-corrected.

3. **Claim Construction: "scattered"**

- (a) The term "scattered" in the phrase "a device for collecting a spectrum of near infrared wavelength radiation light transmitted, reflected, emitted or *scattered* from said illuminated area of said sample and producing a collimated beam therefrom" (emphasis added) in Claim 1 indicates that the system in Claim 1 may be used for Raman imaging.

Plaintiffs' Proposed  
Claim Constructions

- (b) Thus, in an embodiment of the invention recited in Claim 1 which uses scattered light, i.e., Raman imaging, the "near infrared imaging spectrometer for selecting a near infrared radiation image of said collimated beam" would select a Raman near infrared radiation image of said collimated beam.

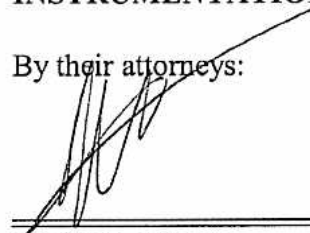
**4. Claim Construction: "near infrared imaging spectrometer"**

The "near infrared imaging spectrometer" recited in Claim 1 may comprise one of "Lyot liquid crystal tunable filters; Evans Split-Element liquid crystal tunable filters; Solc liquid crystal tunable filters; Ferroelectric liquid crystal tunable filters; Liquid crystal Fabry Perot filters; a hybrid filter formed from a combination of liquid crystal tunable filters; and a combination of a liquid crystal tunable filter and a fixed bandpass and bandreject filters" (see, e.g., Claim 4, the '962 patent).

Respectfully submitted,

**PETER J. MILLER, CLIFFORD HOYT,  
and CAMBRIDGE RESEARCH AND  
INSTRUMENTATION, INC.,**

By their attorneys:



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Martin B. Pavane  
Teodor J. Holmberg (BBO# 634708)  
COHEN, PONTANI, LIEBERMAN AND PAVANE  
551 Fifth Avenue  
New York, New York 10176  
Tel. (212) 687-2770  
Fax (212) 972-5487  
E-mail: [tidge@cplplaw.com](mailto:tidge@cplplaw.com)

Brian L. Michaelis (BBO# 555159)  
Erin E. McLaughlin (BBO# 647750)  
BROWN RUDNICK BERLACK ISRAELS LLP  
One Financial Center  
Boston, MA 02111  
Tel. (617) 856-8200  
E-mail: [BMichaelis@brownrudnick.com](mailto:BMichaelis@brownrudnick.com)

Dated: October 3, 2005

Plaintiffs' Proposed  
Claim Constructions

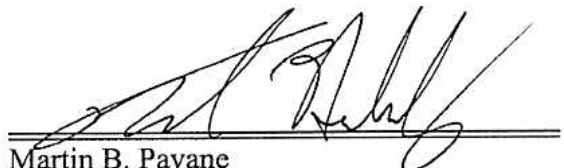
**CERTIFICATE OF SERVICE**

I hereby certify that I am serving a true copy of the foregoing document (identified in the top right-hand corner of this certificate) on the date indicated below via electronic mail upon counsel for the Defendants at the following e-mail addresses:

**afitzpatrick@duanemorris.com**

**pweller@morganlewis.com**

Dated: October 3, 2005



Martin B. Pavane  
Teodor J. Holmberg (BBO# 634708)  
COHEN, PONTANI, LIEBERMAN AND PAVANE  
551 Fifth Avenue  
New York, New York 10176  
Tel. (212) 687-2770  
Fax (212) 972-5487  
E-mail: **tidge@cplplaw.com**

Brian L. Michaelis (BBO# 555159)  
Erin E. McLaughlin (BBO# 647750)  
BROWN RUDNICK BERLACK ISRAELS LLP  
One Financial Center  
Boston, MA 02111  
Tel. (617) 856-8200  
Fax (617) 856-8201  
E-mail: **BMichaelis@brownrudnick.com**